

REPORT

OF THE

COMMITTEE APPOINTED TO INQUIRE INTO THE CONDUCT

OF THE

SECRETARY OF THE COMMONWEALTH,

IN RELATION TO THE RECEIPT AND DELIVERY OF RETURNS OF

REPRESENTATIVES FROM THE COUNTY OF PHILADELPHIA.

Mr. BRODHEAD, Chairman.

READ IN THE HOUSE OF REPRESENTATIVES, Dec. 8, 1838.

HARRISBURG:

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1838.

R E P O R T.

The Committee appointed by virtue of the following resolution

Resolved, That a committee be appointed to inquire into the conduct of the Secretary of the Commonwealth, in relation to the receipt and delivery of the returns of the late election for members of the General Assembly, and that they be authorized to send for persons and papers, beg leave to

REPORT,

That, in discharge of duties assigned them, they addressed the following letter to the Secretary of the Commonwealth, and placed it in the hands of the Sergeant-at-Arms, who made the following statement, under oath, in regard to the delivery thereof.

HALL OF THE HOUSE OF REPRESENTATIVES, }
December 6th, 1838. }

Thos. H. BURROWES, Esq.,

Secretary of the Commonwealth:

SIR—The following is a copy of a resolution and order of the House of Representatives:

"*Resolved*, That a committee be appointed to inquire into the conduct of the Secretary of the Commonwealth, in relation to the receipt and delivery of the returns of the late election for members of the General Assembly, and that they be authorized to send for persons and papers.

" And ordered, that Messrs. BRODHEAD, FLENNIKEN and WOOD-BURN, be the committee for that purpose."

Extract from the Journal.

FR. R. SHUNK.

The Committee will meet for the purpose expressed in the said resolution, in the east committee room, to-morrow morning at nine o'clock, when and where you may attend if you think proper.

Respectfully Yours,

R. BRODHEAD, Jr.

Chairman.

ANDREW KRAUSE, Sergeant-at-arms of the House of Representatives, being duly sworn according to law, says that the within letter was handed to him last evening, about six o'clock, that he immediately took a copy thereof, and proceeded to the dwelling house of the Secretary of the Commonwealth, and inquired for him of one of his clerks, and was informed that he was not in; that he then stated that he had a letter for him, and was informed by the said clerk that the secretary would not receive it; that he then laid a copy of it in the hall of the house, and the said clerk threw it at him as he withdrew.

AND. KRAUSE.

Affirmed and subscribed, Dec. 7th, 1838.

R. BROADHEAD, Jr., Chairman.

That at the time and place specified in the letter the committee met, the said secretary did not appear, and they proceeded to examine the following witnesses upon the subject of the receipt and delivery by him, of the returns of the Philadelphia county election, for members of the General Assembly.

JOHN J. M'CAHEN, being duly sworn, according to law, says, that he was one of the return clerks of the seventeen return judges for the county of Philadelphia, who assembled in the State House on the 12th day of October last, for the purpose of adding together the votes, and making out certificates of the election for the said county; that George W. Smick was appointed president of the said meeting, and Samuel J. Robbins and himself, clerks; that he participated in all the legal proceedings of that body, until it was adjourned *sine die*,—and in obedience to the directions of the aforesaid return judges, Mr. George W. Smick, the said president, the said Samuel J. Robbins and this deponent, delivered into the hands of John L. Wolf, deputy of the sheriff of the county of Philadelphia, a true and legal return, made by the return judges met as aforesaid, endorsed the time of delivery, and attested the same with our signatures: That John G. Wat-maugh, then high sheriff of the city and county of Philadelphia, informed him, on Monday, the 15th of October, 1838, that he had sent the said returns to the secretary of the commonwealth on that day; that at four o'clock in the afternoon of the same day, he left Philadelphia, and arrived at Harrisburg the next morning, and in company with Thomas L. Wilson, a resident of Harrisburg, called upon Thos. H. Burrowes, Secretary of the Commonwealth, and seen the aforesaid legal and true returns of and for the county of Philadelphia, in his office and in his hands; that there was also deposited in the Philadelphia post office, a duplicate of the true and legal returns aforesaid, for members of the General Assembly, and that the following is a copy thereof, with this exception: that he believes the name of Andrew Hagne was appended to each of the returns which were sent to the Secretary of the Commonwealth.

J U D G E S.

We, the subscribers, judges of a general election held at the several election districts in the county of Philadelphia, except the unincorporated district of the Northern Liberties, (which return was rejected) on Tuesday, the ninth day of October, in the year of our Lord one thousand eight hundred and thirty-eight, for representatives of the county of Philadelphia in the House of Representatives of the General Assembly of the Commonwealth of Pennsylvania, do certify, that the following persons had the number of votes affixed to their respective names, to-wit:

Charles Pray, seven thousand eight hundred and seventy votes,	7870
John W. Ryan, seven thousand eight hundred and seventeen votes,	7817
Miles N. Carpenter, seven thousand eight hundred and sixty-nine votes,	7869
Thomas H. Brittain, seven thousand eight hundred and ninety-nine votes,	7899
Abraham Helffenstein, seven thousand eight hundred thirty-seven votes,	7837
John W. Nesbit, seven thousand eight hundred and eighteen votes,	7818
Thomas J. Heston, seven thousand eight hundred and nineteen votes,	7819
Benjamin Crispin, seven thousand nine hundred and twenty-two votes,	7922

And we do further certify, that the said Charles Pray, John W. Ryan, Miles N. Carpenter, Thomas H. Brittain, Abraham Helffenstein, John W. Nesbit and Thomas J. Heston and Benjamin Crispin had the *highest number* of votes polled for Representatives as aforesaid, and we hereby declare them to have been elected members of the House of Representatives of the Commonwealth of Pennsylvania.

In testimony whereof, we, the said judges, have hereunto set our hands and seals the day and year first above written.

GEORGE W. SMITH,	[L. s.]
J. H. FLUTCROFT,	[L. s.]
CHARLES VANSANT,	[L. s.]
MICHAEL PRAY,	[L. s.]
JESSE WEISS,	[L. s.]
JUSTICE COX.	[L. s.]
L. CROUSELLET,	[L. s.]
PETER BENDER,	[L. s.]
BENJAMIN SAGE,	[L. s.]

[That he addressed a letter to the Harrisburg post office, requesting the persons there, to note the time of the receipt of the same, to whom and when delivered.

JOHN J. M'CAHEN.

Sworn and subscribed, Dec. 7, 1838. }
R. BROADHEAD, *Chairman.* }

THOMAS L. WILSON, a resident of Harrisburg, being duly sworn according to law, says, that on the 16th day of October last, he called at the office of the Secretary of the Commonwealth, in company with Col. John J. M'Cahen, and heard a conversation between the said Secretary and him, upon the subject of the returns of the election for members of the legislature for the county of Philadelphia &c. That immediately after the said conversation, he reduced it carefully to writing, and made oath to the same. That he now has it in his possession. [Here he handed the same to the Chairman of the committee and is hereunto annexed.]

THOMAS L. WILSON.

Sworn and subscribed, Dec. 7, 1838.

R. BROADHEAD, Jr., Chairman.

MEMORANDUM, of a conversation, held this day, Tuesday, Oct. 16, 1838, in the room of the Secretary of the Commonwealth, between Thomas H. Burrowes, Secretary of the Commonwealth, and Col. J. J. M'Cahen of the county of Philadelphia, at which conversation the undersigned was present, and which he committed to paper immediately upon his return to his office.

At the request of Col. M'Cahen, I accompanied him to the office of Mr. Burrowes, where we saw him between 11 and 12 o'clock, A. M. The following conversation took place between Col. M'Cahen and Mr. Burrowes :

Col. M'Cahen, asked Mr. Burrowes, if he had received the official returns of the election for the county of Philadelphia ?

Mr. Burrowes—I have.

Col. M'C.—When and by whom ?

Mr. B.—On Saturday last, about 2 o'clock, by Mr. Hedges (or Hodges) a deputy of the Sheriff of Philadelphia.

Col. M'C.—Have you received no returns since ?

Mr. B.—I have.

Col. M'C.—When ?

Mr. B.—Last evening.

Col. M'C. then asked to look at these last returns, and they were shown to him by Mr. B. Col. M'C. then counted them over and remarked, that they were numbered (if I recollect aright) from 1 to 6.

There was one return directed to Mr. Canfield, the Clerk of one of the courts of Philadelphia, which, Col. M'C. said, should not have been forwarded to the Secretary of the Commonwealth. Col. M'C. then informed Mr. Burrowes that these were the returns of the majority of the return judges, and asked Mr. B.—Do you not consider these as official returns?

Mr. B.—No.

Col. M'C.—Why?

Mr. B.—The returns received on Saturday, were handed to me by a deputy of the Sheriff—these last returns were received by a private individual [I think he said by a citizen of Harrisburg or Dauphin county.]

Col. M'C.—By whom were they sent to you?

Mr. B.—They were enclosed to me in a letter from the Sheriff, who gave them to the individual alluded to, for the purpose of being delivered to me.

[Col. M'Cahen here contended that this individual was a deputy or an authorized agent of the Sheriff—which Mr. Burrowes did not attempt to controvert.]

Col. M'Cahen then asked,—Do I understand you to say that you do not recognize these last returns, as being the official returns?

Mr. B. I do not consider them as official.

Col. M'C.—As I am deputed by the legal return judges, to call on you, and ascertain whether their returns have been officially received by you, and as you state that you do not recognize them as being official, I presume that I may take their returns back with me? [Col. M'C. had taken the papers from the Secretary's table.]

Mr. B.—[Seizing hold of the returns]—you cannot.

Col. M'C.—Why not? I am the agent of the majority judges, and you say that you will not recognize their returns as official.

Mr. B.—I will not give them up except to the Sheriff.

After some farther unimportant remarks, Col. M'Cahen and myself left the Secretary's room. During the whole of the conversation, Mr. Burrowes said, he considered the returns received on Saturday, [being those of the minority judges] as official—the only reason for which he gave, was, that they were forwarded by a deputy of the sheriff, although he acknowledged that the returns of the majority judges [received on Monday evening] were subsequently received by him in a letter from the Sheriff, and delivered to him by the person deputed by the sheriff to do so.

The impression made upon my mind by the whole of the conversation was, that there was an understanding between the Secretary of the Commonwealth, and the Sheriff, to prevent the returns

of the majority of judges being laid before the Legislature at the proper and usual time—as he (Mr. Burrowes) strongly intimated as much as that he and the Sheriff were the judges of the official character of the returns.

DAUPHIN COUNTY, SS.

Before me, the subscriber, a justice of the peace, in and for said county, personally came Thomas L. Wilson, who being duly sworn according to law, doth depose and say that the fact stated in the foregoing statement, are just and true to the best of his knowledge and belief.

THOMAS L. WILSON.

Sworn and subscribed, Oct. 16, 1838, before me

WM. KLINE.

JAMES PEACOCK, Post Master at the Borough of Harrisburg, being duly sworn according to law, says, that on Sunday the 21st day of Oct. last, I received a note from Col. Jno. J. M'Cahen, by mail from Philadelphia, asking my attention to certain letters (which he described) sent by the same mail, addressed to the Secretary of the Commonwealth, and requesting me to see that they were delivered according to the address. I selected the letters referred to, and tied them together with a string, and deposited them in the box appropriated for the use of the office of Secretary of the Commonwealth, where they remained until Monday morning, when Mr. Isaac Harris, who was in the habit of calling for the letters in the morning, attended for the purpose of receiving them. I then handed to him the letters, I had secured with the string, and charged him to deliver the packet to Mr. Burrowes himself, or to Mr. Wallace, the deputy Secretary of the Commonwealth. In the course of the morning he again visited the Post Office, and informed me that he had handed the packet to Mr. Wallace, as Mr. Burrowes was not present. The letters was seven in number, and a memoranda in writing had been made on each of them, with one exception, stating that they were election returns. The memoranda were made on the letters referred to in Mr. M'Cahen's letter to me.

JAMES PEACOCK.

Sworn and subscribed this 8th day of Dec. 1838.

R. BROADHEAD, Jr., Chairman.

FRANCIS R. SHUNK, Clerk of the House of Representatives, being duly sworn, doth depose and say: That on Tuesday the 4th inst., he was appointed by the members present of the House of Representatives to read the returns of their election. That the Secretary of the Commonwealth was introduced into the Hall of the House and presented a sealed packet, accompanied with a letter, of which the following is a copy:

"To the members elect, of the House of Representatives.

"GENTLEMEN:

"Herewith are transmitted for your use, and in accordance with
"the acts of Assembly on the subject, the official returns of the elec-
"tion for members of the House of Representatives of this Common-
"wealth, held on the second Tuesday in October, 1838.

"I am gentlemen,

"With great respect,

"Your obd'rent serv't,

"THO'S. H. BURROWES.

"Secretary Commonwealth.

"**SECRETARY'S OFFICE,**
"*Harrisburg, Dec. 4, 1838.*" }

That he broke the seals and opened the package in the presence of the members, and amongst the returns so presented by the said Secretary, there was but one paper purporting to be a return of the election of representatives in the county of Philadelphia, to which paper were affixed the signatures of six persons as return judges, and no more. And, in the body thereof, it was stated that at an election held on the second Tuesday in October, 1838, certain persons therein named, appeared to have the number of votes set opposite to their names, for members of assembly, in the seven following election districts in the county of Philadelphia, to wit :

In the District of Spring Garden—the incorporated District of the Northern Liberties—Blockly—Moyamensing—Bristol—German-town, and Oxford.

And that there was no other return of the election of representatives in the said county, amongst the returns so delivered by the said Secretary, than the one above described. Neither has the said Secretary delivered any other return to the House of Representatives, since that time. The following is a copy of the said return.

FR. R. SHUNK.

Sworn and subscribed. Dec. 7, 1838.

R. BROSHEAD, Jr., Chairman.

We the return judges of the several wards, townships, and districts of the county of Philadelphia, do certify that at an election held on the second Tuesday in October, A. D. 1838, the following named persons appear to have the number of votes set opposite to their names for members of Assembly in the Districts of Spring Gar-

den—the incorporated District of Northern Liberties—Blockly—
Moyamensing—Bristol—Germantown, and Oxford, viz:

Michael Day, six thousand three hundred and forty-six,	6,346
Adam Woelpper, six thousand four hundred and twenty-six,	6,426
William F. Hughes, six thousand four hundred and thirty-two,	6,432
William Loyd, six thousand three hundred and fifty-five	6,355
William J. Craus, six thousand four hundred and forty-two,	6,442
Samuel F. Reed, six thousand four hundred and fifty-five,	6,455
Benjamin R. Mears, six thousand three hundred and forty-six,	6,346
Jesse F. Smith, six thousand three hundred and seventy-two,	6,372
Charles Pray, four thousand nine hundred and twelve,	4,912
John W. Ryan, four thousand seven hundred and fifty-seven,	4,757
Miles N. Carpenter, four thousand eight hundred and fourteen,	4,814
Thomas H. Brittain, four thousand eight hundred and forty-nine,	4,849
Abraham Helfenstein, four thousand seven hundred and seventy-one,	4,771
John W. Nesbitt, four thousand seven hundred and seventy,	4,770
Thomas J. Heston, four thousand seven hundred and seventy-nine,	4,779
Benjamin Crispin, four thousand eight hundred and forty-nine,	4,849
H. Corbit, one,	

Witness our hands and seals at the State House in the city of Philadelphia, this twelfth day of October, A. D., 1838.

W. G. CONNOR,	[L. s.]
WILLIAM OVERINGTON,	[L. s.]
WILLIAM WISTER,	[L. s.]
CHA'S. W. SMITH,	[L. s.]
BELA BADGER,	[L. s.]
JOSEPH SHERMER,	[L. s.]

From the facts and evidence, it clearly appears that the Secretary of the Commonwealth had in his possession on the day of the meeting of the General Assembly, at least two papers which purported to be certificates in relation to the Philadelphia county election for members of the General Assembly and that he only returned one, and that signed by a minority of the return judges.

The return which he withheld, and which he was informed by one of the return clerks was the *official return*, was signed by a majority of the return judges, made out by them in the presence of all the return judges, convened for the purpose of making out the return.

In all cases where an act of a public nature is to be done by a number of individuals, it is a well settled principle, that a majority can act, and that act is binding.

It also states that certain individuals had the highest number of votes, and that they were elected members of the House of Representatives.

Two things are necessary to constitute a valid return. First, it must contain sufficient matter, that is a sufficient number of votes, and second, it should certify who is elected. Both of these requisites have, in the opinion of the committee, been complied with.

The paper which he returned and which he denominates an "official return," is informal, defective, illegal and inadmissible for any purpose—upon its face—and the mere fact of its being deposited in the Secretary's office can give no force or validity to it. Nor can the calling of it an "official return" by that officer, give it authenticity. By the constitution "each house is to judge of the qualification of its own members."

It is defective and illegal, because

First. It does not purport to be the act of the return judges of the county of Philadelphia, *convened* for the purpose of making out a return of the election for members of the House of Representatives.

Second. It does not say who had a majority of the votes polled, nor who was elected. It only says that certain individuals (naming them) appeared to have the votes set opposite their names.

Third. It is only signed by six of the seventeen return judges. The county of Philadelphia is divided by law into seventeen election districts, and it contains the votes of only seven of the said seventeen districts.

It also appears by the testimony of Col. M'Cahen and Mr. Peacock, that the said secretary also received a return of the election for members of the House of Representatives for the county of Philadelphia, signed by a majority of the return judges by due course of mail, which is in pursuance of the act of the 4th of April 1803, which provides (among other things) that the return judges shall place one other return (for members of the House of Representatives) in the nearest Post Office, under a sealed cover directed to the secretary of the commonwealth. This he also withheld.

The law does not constitute him a judge of the official character of the return of an election for members of the House of Representatives. He is a mere depository. Nor is he entrusted with the possession of the only return. The act of 1803, provides that a duplicate return of the election is to be deposited in the Prothonotary's Office, and each person elected is to have transmitted to him by the return judges a "certificate of his election."

The secretary of the commonwealth, in making this garbled and partial return of the evidence of the election for members of the House of Representatives for the county of Philadelphia, your committee are constrained to say, has acted in bad faith to the representatives of the people, assumed powers not given to him by the laws or constitution, and in fact, has made, what, under the facts and circumstances, amounts in effect to a false return.

If he had returned all the evidence in his possession, as he was bound to do by every consideration, moral and legal, there could have been no pretense for gentlemen to say that the *only evidence* which could be received of the election was that which came from the secretary's office, and hence, the difficulties which occurred at the opening of the session, would have been avoided.

This withholding of evidence, and as your committee believe, the best evidence of the election for members of the House of Representatives for the county of Philadelphia, by the said secretary, is a gross usurpation of power, which never should be suffered to pass without censure and punishment, by the representatives of a free people, who have a proper regard for the purity of the elective franchise, and the right of representation.

Entertaining these views, your committee feel imperiously called upon to submit them to the consideration of the House for its consideration and action. It has not been so much an object of the committee to submit an argument as the facts. They are important.

R. BROADHEAD, Jr.
R. P. FLENNIKEN,
JAMES WOODBURN, } Committee.



P. L. Shurie